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SUBJECT: Heart of Gold: A Solid "Foundation" for NGO Work?

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11. (SBU) Summary: If the Foundation Law serves as an
example, non-governmental organization (NGO) legislation is
in for a slow, twisting, uneven ride. One and a half years
after new regulations were issued by the Ministry of Civil
Affairs (MCA), foundations in South China still are trying
to realize the gains promised in the new law. Despite
promises of great leaps forward by national leaders in 2001
the new NGO foundation legislation has proven to be
incremental, complicated and difficult to implement. End
Summary.

What is a Foundation?

12. (SBU) Foundations in this context are legally registered
organizations that are established to disburse funds from
overseas or individuals to carry out public benefit
activities. They are one of three types of NGO that are
allowed to register legally in China; one of those types is
foundations. With the foundation regulations there are
three types of foundations: non-public foundations that
operate from an endowment, public foundations that are
allowed to raise money through fundraising, and
representative offices of foreign foundations that are
allowed to register but are not allowed to do domestic
fundraising.

What Types of NGOs Are Legal in China?

13. (SBU) While the number of NGOs in China are reported to
be in the millions only a small fraction of them are fully
registered with the MCA due to strict registration laws (ref
A). While many NGOs, foreign and domestic, operate in this
legal gray area, there are technically only three major
avenues for legal registration: registering as a foundation,
a social organization, or a non-profit professional unit
(ref A). All three ways require a NGO to find a government
department to serve as a sponsor and to register with the
MCA. Social organizations are membership groups that are

set up (foreigners/foreign NGOs are not allowed to register as social organizations) for a defined set of activities. They are required to have office space, a defined charter of activities, defined membership and have to follow certain financial guidelines. Social organizations not only include traditional service and advocacy NGOs but also professional, commercial and academic associations (i.e. elevator technology association, mathematics association etc.). Non-profit professional units generally encompass private schools, private social service research institutes and private hospitals (again, foreigners/foreign NGOs need not apply). They have requirements that are similar to the social organization but do not have the ability to expand their membership the way a social organization can. Foundations have much higher registration capital and stricter financial regulations than the other two but they are the only category where foreign NGOs are allowed to legally register.

A Long Wait for Legal Revision

¶4. (SBU) While a wave of liberal NGO registration laws was widely hinted at in 2001 they never materialized in the aftermath of a Falun Gong crackdown and the "color revolutions" in Europe. The foundations sector is the only area where there has been liberalization as the Chinese government is eager to cash in on donations from foreign NGOs, overseas Chinese and private businessmen (ref B). Foundations are numerically the smallest NGO sector (about .06% of total registrations in Guangdong Province) and one of the most noncontroversial as they mainly focus on funds disbursement. In 2004, the "Regulations on the Management

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of Foundations" law was promulgated to give a new legal framework to foundations (the law for social organizations and non-profit professional units remains unchanged). The law changed the requirements for which authority a foundation could register with, how much money was needed to register and more clearly defined the role of foreign and private NGOs. Most importantly, all foundations were required to re-register by December 2004, a date which was later extended to September 2005.

The MCA Centralizes Administration - and Control

¶5. (SBU) According to the new law, it was no longer possible to register on the municipal level - all registrations had to be moved to the provincial or national level of authority. Where a foundation registers defines its area of activity. If a foundation wants to operate nationally, (or use China in its name, such as China's Disabled Orphans Foundation) it needs to register on the national-level and have someone from the national office of the China Disabled Person's Federation agree to serve as its sponsor. Foundations wishing to operate in either a specific municipality or province now both register at the provincial level (such as Guangzhou City's or Guangdong Province's Disabled Orphans Foundation), and need to find an appropriate government sponsor (Guangzhou city or Guangdong province Disabled Person's Foundation). This means that even if a foundation wants to operate in only one city it must have provincial level approval (before they only needed municipal level). A researcher at a local NGO center (recently renamed the "Institute for Civil Society") stated that this renewed emphasis on location-appropriate registration presented problems as many foundations had grown and were operating programs outside of their registration area.' The central government's efforts to assert control over foundations adds another of bureaucracy to an already complicated process.

Did Everyone Listen?

16. (SBU) Implementation of the new registration regulations varied in Guangzhou and Shenzhen, two of the largest cities in our consular district. Guangzhou's MCA required all foundations to change their registration to the provincial level but stated it had absolutely no involvement with the transfer or subsequent re-registration. In Shenzhen however, anyone that was registered before 2002 was allowed to keep their current registration at the municipal level (which technically violates the new rules). According to researchers, on the national scale there was even more variation in implementation with certain requirements (particularly financial) being ignored for favored foundations.

It Costs a Pretty Penny to Help the Poor

17. (SBU) While the new foundation regulation gave a more detailed description of the role of foreign NGOs, (foreign NGOs were allowed to register before 2004 as well, but had exhaustive background checks into the source of their funds) it also laid out a strict series of financial guidelines for domestic and foreign foundations; in total 37 new sections were added to the regulations. Foreign foundations were unequivocally barred from fundraising on the mainland though domestic 'public-fundraising foundations' were not. A national-level foundation (foreign or domestic) requires RMB eight million (USD one million) and a provincial-level foundation requires RMB four million (USD \$500,000) in registration capital. Private Chinese citizens can for the first time set up a private foundation in their name with RMB two million (USD \$250,000) of registration capital but that level must be consistently maintained in their account (an endowment) and they are not allowed to do public fundraising. The 1998 rules had the highest needed level of capital registration at RMB 100,000 (USD \$12,500). The huge spike ensured that smaller foreign NGOs (Note: foreign NGOs can not register at all as social organizations or non-

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profit professional units) could not try to use the new foundation law as any easy way to get official registration status.

More Important Than Money

18. (SBU) Most importantly, the 2004 Foundation Law did not eliminate the notorious requirement for every foundation to have a government department or Communist Party-affiliated mass organization to serve as a professional leading organization (government sponsor)(ref C). While the only legal requirement is that the sponsor reviews the foundation's annual report, in reality the sponsor becomes responsible if the foundation does something controversial. In 30 interviews with government officials, NGO officials, and researchers, this requirement was listed as the biggest impediment to more NGOs being able to register.

Operating in South China but Still Waiting in Beijing

19. (SBU) Even some of those that could meet the new rules have not been able to fully re-register. The country director of one foreign orphan care foundation that operates locally, is registered nationally, and enjoys an unusually close relationship with the Chinese Center for Adoption Affairs (CCAA), said the foundation was required to completely re-register after the 2004 law, but has not yet received final approval. Its Chinese sponsor (CCAA) has advised her to be patient and not to call attention to the lengthy time period. While the foundation had originally planned to continue expanding, with an urban and rural project in every province and a new Henan HIV orphan project, it has put the plans on hold indefinitely.

¶10. (SBU) World Vision is one of the largest foundations that operates in South China, and according to its Hong Kong-based director, it is Hong Kong's largest fundraising foundation, raising HKD 500 million (USD \$68.3million) between 1998-2003. It is a Christian organization that does everything from relief operations (it has a nine-person emergency deployment team), to HIV/AIDS education, to 'values' training for workers. While World Vision was given a "Charity China Award" in the first MCA and China Charity Foundation awards ceremony, the MCA still has not been able to finish its application for foundation registration. The director stated that after he submitted the original documents he had to submit some additional financial information but it has been many months and he has had no word about the expected completion date.

Smooth sailing in Guangdong?

¶11. (SBU) On the provincial level, the Guangdong Department of Civil Affairs (DCA) stated that in order to come into compliance with the new act, a foundation only had to show a financial statement showing the new registration capital requirements have been met. A Guangdong DCA official stated that there are no foundations that have had to discontinue their operations, transfers are all complete, and that the numbers of foundations have increased 50% after the new regulations were implemented, now at 132 registered foundations province-wide. (Note: this includes foundations that have had to transfer their registration from the municipal level to the provincial level. The Guangzhou Municipal Bureau of Civil Affairs (BCA) alone had to transfer 20 cases to the province level, which accounts for one-third of the 'growth'). It is surprising that the province could be done on time when the well-respected China Development Brief reported that as of May 2005 only 84 out of 1,000 national-level foundations had been re-registered.

Comment: Raising the Bar

¶12. (SBU) While the Chinese government is eager to reach out for foreign and domestic funding for social programs it seems unwilling to relinquish any control of the sector, and

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is tightening its control instead. Furthermore, the new registration capital requirements shows the emphasis on 'quality' (read: deep pockets) NGOs, a point that has been popular in the press. While government leaders used to hint that the requirement for a government sponsor and the prohibition on foreign NGOs registering as social organizations and non-profit professional units might become a thing of the past, five years later none of this has occurred. The 2004 foundation legislation provided limited change, and functioned more to raise economic barriers to registering as a foundation, thus ensuring that only the wealthiest foundations could apply. In addition, the fact that foreign foundations cannot publicly fundraise prevents them not only from raising funds but from taking advantage of an opportunity to promote and engage the general populace in a discussion about what is going on in their own country. Despite the claims of growth from the Guangdong BCA, it seems that the new foundation law has not spawned a huge growth in the number of foundations applying for registration, at least at the provincial level. Implementation shows that there are always rules that can be bent for a favored foundation, but that the process of meeting the requirements of the rules outlined in the additional 37 sections of the law can be grueling. Nor is the MCA in a rush to approve the 1,000 reported national-level foundation cases that have been waiting since 2004. Its approach to reform in this area has been slow and cumbersome, and the biggest impediment to registration - the professional leading organization requirement - appears to

be here to stay. While this kind of complicated process might be feasible for the 132 foundations registered in Guangdong Province it would mean chaos to try a similar style of `reform' for the 17,000 social organizations and non-profit professional units that are already registered in Guangdong Province alone.

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